

Electronic Voting

Initial question: In your opinion, under the Open Meeting law, is it permissible for organizations that receive public funds to hold electronic discussions and electronic votes via a list serve for example? Does it make a difference if the electronic resource used to hold the vote is publicly accessible and if the discussion is publicly noticed to allow for public participation?

Answer from Jim Scheier, March 16, 2012: [Article II, section 9 of the Montana Constitution](#) provides persons with the right to observe the deliberations of all public bodies or agencies of state government except in cases where the demand of individual privacy clearly exceeds the merits of public disclosure. Relevant Montana statutes strongly favor open meetings of governmental bodies and entities receiving public funds. § 2-3-203, MCA provides in part as follows:

Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public. (Emphasis added).

In 42 Op. Att'y Gen. No. 42 (Dec. 3 1987) the Attorney General stated his opinion that the Daly Mansion Preservation Trust (a private trust) is a public body within the meaning of the open meeting law, because it performed a public function and received funds generated by public property.

Thus, in my opinion an organization that receives public funds and performs a public function must conduct its meetings in a manner that provides for public observation and participation to the extent required by Montana law. If the electronic resource used for the discussion and deliberation provides for public notice and public participation, that would seem to be sufficient to comply with Montana law.